In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-223

JOHN WESLEY HASTY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner contends that he was arrested without probable cause and that the agents exceeded the permissible scope of a search incident to arrest.

Following a jury trial in the United States District Court for the Western District of Texas, petitioner was convicted of conspiracy to import and possess marihuana with intent to distribute (Count One), and having aided and abetted the commission of those offenses (Counts Two and Three), in violation of 21 U.S.C. 841(a)(1) and 952(a) and 18 U.S.C. 2. He was fined $45,000 and sentenced to a term of fifteen years' imprisonment and thirty years of special parole. The court of appeals affirmed *per curiam* (Pet. App. 1a-2a).

On June 30, 1973, at approximately 1:00 a.m., two men were arrested in Hondo, Texas in a pick-up truck loaded with 970 pounds of marihuana (H. 2-3).[1] The owner of the truck, Walter Denny Turner, was arrested several hours later by Agent Wilson of the United States Bureau of Customs. Turner admitted that he had flown the marihuana into the United States and told Agent Wilson the location of the plane, a Cessna 206. Agents Wilson and Overstreet then went to Uvalde, Texas, and inspected the aircraft (H. 3-4, 22). Turner also disclosed to Wilson that the plane was owned by his employer, a wealthy rancher in Mexico (H. 4, 18, 22, 30).

Agent Wilson had learned that petitioner was a rancher in Mexico, and was the registered owner of the Cessna 206 (H. 5-7, 32-33).[2] Wilson was aware that another plane owned by petitioner had recently been examined by Customs agents on two occasions and was found to contain marihuana sweepings (H. 6). Moreover, Wilson knew that yet another plane owned by petitioner and loaded with marihuana had previously crashed in Mexico (H. 6). An examination of the files of the Bureau of Customs had also indicated that petitioner was a susupected narcotics smuggler (H. 7). Upon being advised that petitioner and another male had recently arrived at San Antonio International Airport, Agent Wilson decided to arrest them (H. 36-39).

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[1]"H." refers to the volume of the transcript of the hearing on the motion to suppress. "Tr." refers to the transcript of the trial.

[2]Petitioner contends that the Cessna 206 had been sold prior to his arrest. Richard Downing, an aircraft salesman for the company through which petitioner purchased planes, told Agent Overstreet prior to petitioner's arrest that petitioner no longer owned the Cessna 206 which he had purchased on May 16, 1973 (Tr. 307, 324). Nevertheless, petitioner was listed as the registered owner of the aircraft both at that time and in November 1973, one month prior to trial (Tr. 375-376). Investigations by Agent Overstreet failed to reveal any other owner (Tr. 376-380). Petitioner produced no evidence as to the identity of the alleged buyer of the plane.

Agent Wilson arrived at the airport and arrested Johnny Mack Hasty, petitioner's son, who informed him that his father was at the Albert Pick Motel, Room 230 (H. 9, 40). Wilson sought authorization from petitioner's son to search the room. Johnny Hasty gave Wilson the room key, which had been discovered in a search of his person, and told Wilson that he could search the room for there was nothing there (H. 9, 41).[3]

Wilson had been informed that petitioner carried a gun in his briefcase and should be considered dangerous (H. 7, 42, 44). After checking at the registration desk to determine whether petitioner was in his room, Agent Wilson, accompanied by other agents, used the key to enter the room unannounced (H. 7, 9-10, 42-44). Petitioner was standing between two double beds with a briefcase lying open on the bed when the agents entered (H. 44-45).[4] After announcing that he was a federal Customs agent, Wilson arrested petitioner and another agent immediately searched the briefcase (H. 10-11, 44-45; Tr. 354). The contents of the briefcase, consisting primarily of papers, was seized. When the gun was not found, Wilson searched the remainder of the motel room (H. 48). This search revealed nothing.

Walter Denny Turner testified that he had been employed by petitioner as a pilot to fly marihuana into the

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[3]Walter Turner, the pilot of the Cessna 206, testified that Johnny Hasty was not involved in the scheme (Tr. 134).

[4]Agent Wilson testified that both a briefcase and a flight bag were lying open on the bed directly in front of petitioner (H. 49-50). Another Customs agent also testified that the briefcase was on the bed (Tr. 355). At the suppression hearing petitioner contended that the flight bag alone was lying on the bed and the briefcase was closed and located on a luggage rack on the side of the room (H. 51-53).

country from Mexico (Tr. 34-37, 160, 220-221).[5] On June 29, 1973, he was instructed to make another trip to Mexico and was given approximately $30,000 to be used to purchase marihuana (Tr. 124-125). He flew the Cessna 206 to the same runway in Mexico that he had used on previous trips and exchanged the money for approximately 1,000 pounds of marihuana (Tr. 125-126). On the return trip he was forced to land unexpectedly in Uvalde, Texas, due to engine failure (Tr. 131, 159). After unsuccessfully trying to reach a person he was to call if an emergency arose, Turner called two of his friends who brought his pick-up truck and assisted him in transferring the marihuana to the truck (Tr. 132-133). Shortly thereafter, Turner's friends were apprehended by Customs agents (H. 2-3; Tr. 133). Turner, who had separated from his friends, was arrested at a service station where he stopped after noticing his truck parked there (Tr. 133).

Documentary evidence seized from petitioner's briefcase was introduced to corroborate the testimony of Walter Turner. The majority of the exhibits were invoices for gasoline and services on the Cessna 206 performed throughout the period of time Turner had use of the aircraft (Tr. 272-274, 368). Another set of exhibits contained dates and columns of numbers which corresponded to Turner's testimony concerning the dates of his flights to Mexico, the price paid for the marihuana, and the number of pounds purchased (Tr. 355-361). Each of the remaining documents was introduced to corroborate other aspects of Turner's testimony.

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[5]In return for his cooperation, Turner was promised that he would not be prosecuted for his involvement in this crime.

1. There was probable cause for petitioner's arrest. Probable cause exists when the facts and circumstances within the arresting officer's knowledge and of which he has reasonably trustworthy information are sufficient to justify the belief that a crime has been committed by a suspect. *Carroll* v. *United States,* 267 U.S. 132, 162. The record shows that Agent Wilson had such knowledge and trustworthy information about petitioner's involvement in the smuggling scheme.

Agent Wilson knew that an aircraft officially registered to petitioner had been used to bring marihuana into the country and that the Bureau of Customs suspected petitioner was engaged in smuggling narcotics. See *United States* v. *Harris,* 403 U.S. 573, 583. Wilson was aware that this suspicion was supported by recent Customs examinations of another of petitioner's planes, which had uncovered marihuana sweepings, and by a report that still another of petitioner's planes had crashed in Mexico with a load of marihuana aboard. In these circumstances, Agent Wilson had probable cause to arrest petitioner. However, petitioner contends that his plane's registration with the Federal Aviation Administration (FAA) could not be used to establish ownership of the aircraft because of 49 U.S.C. 1401(f)[6] (Pet. 4). His reliance on that section is misplaced. The registration was not utilized to establish petitioner's ownership in a legal proceeding; rather, it was merely evidence of a "fact or circumstance" which helped to establish probable cause.

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[6]49 U.S.C. 1401(f) provides in pertinent part:

> * * * Registration shall not be evidence of ownership of aircraft in any proceeding in which such ownership by a particular person is, or may be, in issue.

Petitioner's further contention that Agent Wilson lacked probable cause because Agent Overstreet had been told that petitioner had sold the plane is likewise without merit. Since his examination of official FAA records did not disclose the alleged sale, Agent Overstreet understandably did not relate this information to Wilson prior to the arrest. The FAA records showed no owner other than petitioner even four and one-half months after the alleged sale. Nevertheless, assuming *arguendo* that a legitimate sale had taken place prior to petitioner's arrest, the official registration of ownership would have supported a reasonable although erroneous belief that petitioner was the owner. It was quite reasonable to believe that petitioner was the owner of the aircraft in light of both the registration and Turner's information that the plane was owned by a wealthy rancher in Mexico, a description Wilson knew fitted petitioner.

2. Petitioner also contends that the agents exceeded the proper scope of a search incident to arrest.

Upon their entry into the motel room, the agents noticed petitioner standing by the bed with a briefcase within his reach. The agents were entitled to search petitioner and that "area from within which he might gain possession of a weapon or destructible evidence." *Chimel* v. *California,* 395 U.S. 752, 763.[7] This search of an area within petitioner's immediate control and search of the person were properly incident to a valid arrest. *United States* v. *Robinson,* 414 U.S. 218. Thus, the evidence seized from the briefcase was properly admitted at trial.

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[7]After a search of petitioner and his briefcase failed to uncover the weapon he was believed to carry, a more thorough search of the room itself was undertaken. This more extensive search produced nothing, and its legality is thus not in issue. Petitioner alleges that all of his belongings in the motel room were seized at this time (Pet. 10-11). The record does not support this contention.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

NOVEMBER 1974.